

## *Hearing Examines Measure that Would Enable Family of Sgt. Carmelo Rodriguez & Others to Hold Military Accountable for Negligent Medical Care*

Washington, DC - Congressman Maurice Hinchey (D-NY) today testified before the House Judiciary Subcommittee on Commercial and Administrative Law at a hearing on Capitol Hill regarding a bill the congressman authored that would enable armed service members and their families to hold the military accountable for medical malpractice. Current law prevents any such malpractice lawsuits from being filed against the military regardless of the egregiousness of the situation. The prepared text of Hinchey's remarks to the subcommittee is below.

Hinchey's bill, the Carmelo Rodriguez Military Medical Accountability Act of 2009, is named after the late Sgt. Carmelo Rodriguez of Ellenville, New York, who died of skin cancer in 2007 after a series of extraordinary mistakes made by military medical personnel. Sgt. Rodriguez's sister, Ivette, also testified before the subcommittee and detailed the impact the tragedy has had on her family. Hinchey first introduced the bill last year, and he reintroduced the measure in the current session of Congress earlier this month.

Rodriguez, a Marine who served in Iraq, died in 2007 at the age of 29. Upon enrolling in the military in 1997, Rodriguez received an initial medical exam that revealed melanoma on his buttocks. The doctor making the diagnosis, however, failed to tell Rodriguez or refer him to a specialist. While serving in Iraq in 2005, Rodriguez was bothered by the area on his buttocks, which was constantly bleeding. A different military doctor repeatedly misdiagnosed the skin cancer as a birthmark or wart.

As the skin cancer worsened, Rodriguez's family was unable to receive a copy of his medical records from the Marines to give to other doctors. The family then asked Hinchey's office for help, but by the time the congressman's office received the medical records from the Marines it was too late. Carmelo Rodriguez had three surgeries, received radiation and chemotherapy, but it didn't save his life. The cancer had spread throughout his body and weakened him to the point that he went from being an athletic 190 pound man to weighing less than 80 pounds. He left behind a loving family, including a son who was seven years-old.

Hinchey's bill would legislatively reverse the U.S. Supreme Court's 1950 ruling in *Feres vs. United States* in which the court ruled that military members and their families have no right or

ability to sue the military for negligent medical care given to them during their service. The ruling, which has subsequently been referred to as the Feres Doctrine, has left families such as the Rodriguez's with no recourse for addressing the loss of a loved one due to obvious medical malpractice by military doctors and other medical personnel.

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PREPARED STATEMENT OF CONGRESSMAN MAURICE HINCHEY  
BEFORE THE COMMITTEE ON THE JUDICIARY  
SUBCOMMITTEE ON COMMERCIAL AND ADMINISTRATIVE LAW

H.R. 1478, THE "CARMELO RODRIGUEZ MILITARY MEDICAL ACCOUNTABILITY ACT OF  
2009"  
MARCH 24, 2009

"Chairman Cohen, Ranking Member Franks and distinguished members of the Subcommittee, thank you for the opportunity to appear before you today to discuss the Carmelo Rodriguez Military Medical Accountability Act of 2009.

"The focus of this hearing is about equal protection under the law. The question before you is whether or not we, as members of this Congress, believe that members of our nation's military are deserving of the same rights as you or I.

"In our country, if you or a member of your family goes to a doctor or medical professional for treatment and that professional is negligent in their job, you have the legal right to hold that healthcare provider accountable through the judicial system. For example, if you had a planned surgery to amputate your left leg and the doctors involved were negligent in that surgery and removed your right leg, you would have a method of recourse. That recourse is available for all of our citizens, including those in federal prison. But that is not the case for members of the military.

"In 1950, nearly 60 years ago, the U.S. Supreme Court ruled in Feres vs. United States that

military members and their families have no right or ability to sue the military for negligent medical care given to them during their service. The ruling, which has subsequently been referred to as the Feres Doctrine, has left families with no recourse for addressing the loss of a loved one due to obvious medical malpractice by military doctors and other medical personnel.

"Sadly, my constituent and his family are all too familiar with this situation.

"Sgt. Carmelo Rodriguez was a young, strong Marine. He was dedicated to his country and family and served admirably as a platoon leader in Iraq. After being repeatedly misdiagnosed by military doctors, Sgt. Rodriguez's cancer spread throughout his body and weakened him to the point that he went from being an athletic 190 pound man to weighing less than 80 pounds. He left behind a loving family, including a seven year old son.

"The death of Sgt. Rodriguez is an extraordinary tragedy that has left his family with nowhere to turn. As the result of a misguided law and subsequent U.S. Supreme Court ruling, the Rodriguez family and many other military families in similar situations have no way of holding the military responsible for the negligence of military medical personnel.

"Joining the military should not mean that one has to give up his or her right to hold medical providers accountable. The Carmelo Rodriguez Military Medical Accountability Act of 2009 will finally bring accountability into the military medical system and afford our service members and their families the same rights that the rest of us have when it comes to medical malpractice.

"This bill would legislatively reverse the Feres Doctrine. It would only apply to military personnel who were injured by medical negligence by military medical personnel. Importantly, this legislation prohibits any claim arising out of the combatant activities of the Armed Forces during time of armed conflict, which means military medical personnel working in combat would be exempt. In addition, this legislation would require the payment of any claims to be reduced by the value of other federal benefits received as a result of the injury.

"In addition to providing the Rodriguez family and other military families with a way to hold the military accountable for the wrongful death and injuries of loved ones, this bill helps ensure that the military, like any other healthcare institution, takes steps to improve care so that no one else ever has to go through what the Rodriguez's have endured.

"Sgt. Rodriguez's situation speak directly to the fact that our military, including the military's health care system, has been spread far too thin by our ongoing military operations. Our military is facing shortfalls of doctors, nurses, and other health care staff across the board. It is incumbent upon the military to ensure that it has doctors who know how to diagnose non-combat injuries and diseases such as skin cancer rather than just having doctors who are trained to treat combat wounds.

"In the opinion of the subcommittee, how could it be possible that of all Americans, members of the military and their families are left no recourse in the face of such medical negligence?

"Unfortunately, the Rodriguez family is not alone.

"In California, the wife and two small children of Staff Sergeant Dean Witt, want to know why the military can't be held accountable when he died after routine appendicitis surgery.

"Christine Lemp, whose husband, James, died after receiving questionable medical care for a stomach virus in Missouri, deserves to know why there's no recourse to holding the military accountable.

"Eight National Guardsman and their families from the New York City area deserve answers in the face of the medical negligence that occurred after their exposure to depleted uranium in Iraq.

"This country and this Congress have affirmed their support for the men, women and families of the United States military. And now this lasting injustice must be fixed.

"This bill isn't about members of the military being compensated fairly for medical negligence, it's about holding our military accountable for its actions and for its responsibility to its members.

"As a veteran and member of Congress, I believe we must match the dedication and sacrifice of our soldiers with the adequate healthcare they deserve and a fair avenue of recourse in the case that they do not receive it.

"I am hopeful that this Subcommittee will agree and work with me to advance this important legislation.

"Thank you for this opportunity to present this testimony."

STATEMENT OF IVETTE RODRIGUEZ  
SISTER OF SGT. CARMELO RODRIGUEZ

BEFORE THE COMMITTEE ON THE JUDICIARY  
SUBCOMMITTEE ON COMMERCIAL AND ADMINISTRATIVE LAW

H.R. 1478, THE "CARMELO RODRIGUEZ MILITARY MEDICAL ACCOUNTABILITY ACT OF 2009"  
MARCH 24, 2009

"Chairman Cohen, Representative Franks and distinguished members of the Subcommittee, thank you for the opportunity to appear before you today to discuss my brother's service to this country, the events that led to his death, and the bill Congressman Hinchey introduced, which is named after him, the Carmelo Rodriguez Military Medical Accountability Act of 2009.

"I'm not someone with a big fancy job, or political connections. I'm just a loving sister and mother of two, soon to be three, who lost her brother to a horrific case of medical negligence. I speak not just for my whole family who miss my brother dearly, including his young son Carmelo Rodriguez IV, but I speak for the countless other military families who have been forced to confront similar situations.

"On November 16, 2007, when Carmelo passed away, I lost not only my brother but my best friend and an American hero. Carmelo was a decorated Marine and platoon leader who proudly served his country in Iraq. Before, during, and after my brother's service in Iraq his cancer was repeatedly and extraordinarily misdiagnosed as a wart or birthmark.

"In 1997, when Carmelo enrolled in the Marines, a physical performed by U.S. Military staff concluded that Carmelo Rodriguez had melanoma present on his right buttocks. However, no action was taken. In March of 2000, Carmelo marked "no" on a medical history report question about cancer -- he was not aware of his melanoma.

"During March of 2005, while Carmelo was deployed in Iraq, he saw another military doctor for a growth or sore on his buttock. He was told to keep it clean and visit the doctor again when he got back to the United States, which would be five months later.

"In November of 2005, Carmelo saw that same doctor back in the United States and was directed to dermatology to have the so-called "birthmark" removed for cosmetic purposes. The next year and several months later in April of 2006, while several referrals were "lost in the system," Carmelo's so-called "birthmark" was bleeding and pussing all the time.

"Finally, out of frustration and concern for his own health, he took action and made an appointment to see a dermatologist, without a referral. A week after his next appointment he was told he had stage III malignant melanoma.

"Carmelo had three surgeries, received radiation and chemotherapy but it was too late. The cancer had spread to his lymph nodes, his liver, kidney, stomach, and throughout his body. The doctors told him that if it had been caught earlier, it would have made a big difference. It probably would have saved his life.

"My brother was a young, strong man. His body was reduced from 190 pounds to under 80 pounds. At the age of 29, he died of a skin cancer that should have been caught much, much earlier by the military he so ably served and was counting on.

"Carmelo wanted his story to be heard even if his life couldn't be saved, he wanted to ensure that what happened to him would not happen to another service member. On November 16, 2007, with CBS news reporter Byron Pitts at our family's home, my brother passed away.

"When Carmelo enlisted in the Marine Corps he swore an oath to live his life according to military standard, to follow orders without question. He did this willingly and without reservation. Carmelo proudly took this oath assuming that the military would care for his well-being. Those who were tasked by the military to provide that care were expected to provide a basic standard of care.

When the medical personnel failed to provide the basic care that would have saved my brother, they hid behind the military. Now that the military failed to live up to their oath, they hid behind a nearly 60 year-old precedent called the Feres Doctrine.

"Sadly, my family's story is shared by many others. My question for the military is why, after such a critical failure in health care, has the military not conducted and completed a full investigation into the circumstances that led to my brother's death? Why would this not be done to save the lives of others who currently may be misdiagnosed right now?

"My question for Congress is how could it be possible that of all Americans, members of the military and their families are left no recourse in the face of such medical negligence?

"I am grateful to Congressman Hinchey for his support. He has never waived in his commitment to my brother, our family, and all service men and women.

"What service men and women and their families want and deserve is equal protection under the law.

"Thank you."